

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

Atty Dkt. 4949-3

WEBB et al

C# M#

TC/A.U.: 3622

Serial No. 10/066,597

Examiner: J. Janvier

Filed: February 6, 2002

Date: January 8, 2007
(January 7, 2007
being a Sunday)

Title: PATRONAGE INCENTIVE SAVING SYSTEM AND METHOD FOR RETAIL
BUSINESSES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

01/09/2007 H#ARZI1 00000102 10066597

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500.00 OP

Sir:

☐ Correspondence Address Indication Form Attached.

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences

from the last decision of the Examiner twice/finally rejecting applicant's claim(s). \$500.00 (1401)/\$250.00 (2401) \$

☐ An appeal **BRIEF** is attached in the pending appeal of the above-identified application \$500.00 (1402)/\$250.00 (2402) \$

☐ Credit for fees paid in prior appeal without decision on merits -\$ ()

☒ A reply brief is attached in triplicate under Rule 41.41 (no fee)

☐ Pre-Appeal Brief Request for Review form attached.

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
One Month Extension \$120.00 (1251)/\$60.00 (2251)
Two Month Extensions \$450.00 (1252)/\$225.00 (2252)
Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)
Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on -\$ ()

TOTAL FEE ENCLOSED \$ 0.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.
By Atty: Larry S. Nixon, Reg. No. 25,640

Signature: Larry S. Nixon

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* * * * *

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Mail Stop Appeal Brief - Patents
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P.O. Box 1450
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Sir:

REPLY BRIEF

The Examiner is thanked for helpful responses (in the Examiner's Answer) to applicant's earlier arguments. In response to the Examiner's latest arguments in the Examiner's Answer dated 11/07/2006, this Reply Brief is presented.

Of course it is true that Burke improved upon previous methods/systems by allowing excess funds from consumer spending transactions in multiple locations to be transferred into a wide and diverse range of accounts selected by the consumer subscriber. To achieve this, Burke created a four-level Clearing House Managed System (CMS). In previous methods/systems, the consumer had very little opportunity to either create excess funds or determine where those funds would be applied.

It is also true that in Burke's CMS, a Subscriber/Payor could contribute as little as a penny in a transaction. However, there is an important difference between "contributing or collecting" excess funds on the one hand and "saving and investing" on the other hand. Although in Burke's CMS, a penny can be "contributed" by a Subscriber/Payor (level 1) at a Merchant/Collector's (Level 2) POS site, it then is segregated by the Clearing House (Level 3) for each individual, pooled in a Subscriber/Payor's Clearing House account and then forwarded only after pre-selected thresholds are reached to a wide range of Provider Accounts (Level 4) selected by the Subscriber/Payor.

In this regard, a penny may be "collected" in Burke's CMS, but it is not able to be "saved or invested" until enough pennies have been deposited by each individual Subscriber/Payor to overcome specified thresholds as set by the Provider Accounts (Level 4) who can be banks, insurance companies and security firms.

By design, Burke's CMS Clearing House (Level 3) acts as an account manager. For each individual Subscriber/Payor, the Clearing House pools excess funds from consumer spending transactions (even if it's just a penny) from multiple locations into that individual's Subscriber/Payor's Clearing House account and then transfers that Subscriber/Payor's once fragmented pennies into one or more Provider Accounts (Level 4) once threshold amounts have been reached.

In contrast, under the Roundit system, there is no:

- Clearing House

- Threshold amounts
- Plurality of Provider Accounts

The Burke CCC (Level 3) is a singular managed central clearing house computer system that transfers data and funds to multiple Provider Accounts (Level 4). As such, its principle operation is to pool all of an individual Subscriber/Payors excess funds, segregate transactions per provider accounts, and then transfers these funds to each Provider Account once threshold amounts have been reached.

It is clearly understood in the financial industry that most, if not all, high-yield saving or investment vehicles have a minimum threshold deposit amount required for purchasing or obtaining the product. Recognizing this, Burke's CMS pools and holds excess funds from Subscriber/Payor spending transactions and then transfers them only after respectively corresponding threshold amounts are reached as determined by each Provider Account (Level 4).

Given this Burke arrangement, the CCC cannot be expected to transfer "pennies" to any Provider Account. That is, although under Burke a penny may be "collected", it cannot be immediately "saved or invested" in the Provider Accounts until a defined threshold amount has been reached.

Under the claimed system, excess funds from consumer spending transactions are pooled together into a "collective account" to overcome any minimum threshold requirement and then transferred to a single saving or investment vehicle.

Whereas Burke provides Subscriber/Payors an unlimited range of choices where they may transfer their excess payment amounts, the claimed system offsets only a single saving or investment vehicle and therefore needs no central clearing house to manage multiple Provider Accounts. Instead, the claimed system pools excess funds from all Subscriber/Payors into a “collective account” that then is directly transferred to a single saving or investment vehicle overcoming any individual threshold amount required.

The Examiner contends that it’s clearly understood in the financial industry that a customer or investor can invest in a vehicle such as a mutual fund, a hedge fund or some other “collective investment vehicle”. To this end, the Examiner argues that Burke implicitly supports that a Subscriber/Payor’s excess payments in these investment vehicles are considered to be invested in a collective (merging) investment vehicle created at the mutual fund company and shared by a plurality of customers (collective investment).

However, the “collective or merging” account referenced in applicant’s claims is created by pooling excess funds from all Subscriber/Payors **prior** to transfer to any single saving or investment vehicle. In this regard, the claimed system, the “collective or merging” account is formed pre-transfer. Moreover, the single saving or investment vehicle itself may or may not be a “collective or merging investment vehicle” such as a bank high-yield savings account.

The Examiner has confused the “collective or merging account” in applicant’s novel system that pools excess funds “collected or contributed” from all

Subscriber/Payors prior to transfer to a single saving or investment vehicle (whereas Burke’s Clearing House segregates and accumulates individual funds until Provider Account threshold levels are reached) with saving or investment vehicles common in the financial industry, like mutual funds, that also can be described as “collective accounts.”

Given the above, the claimed system/method is distinguished from Burke in at least the following ways:

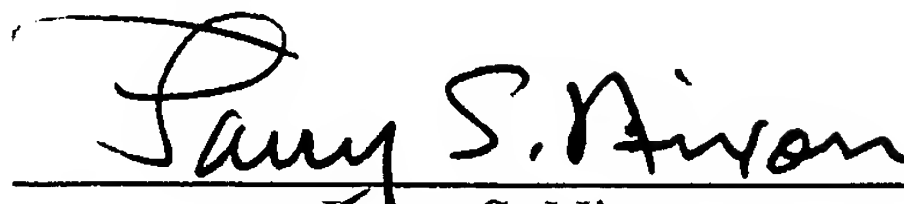
<u>Burke</u>	<u>Claimed System</u>
Level 1:Subscriber/Payors	Level 1:Subscriber/Payors
Level 2: Merchant Collectors	Level 2: Merchant Collectors
Level 3: Clearing House	Level 3: Collective Account (merges all Money/collects all data from Subscriber/Payors)
Level 4: Multiple Provider Accounts	Level 4:Single Saving or Investment Vehicle

One value and novelty of the claimed method/system over Burke is that a “penny” not only can be collected/contributed from multiple and diverse locations, but moreover, that penny almost immediately can begin to earn a high rate of return for a Subscriber/Payor without having to wait to achieve a minimum threshold requirement. In clear distinction to Burke, the claimed system provides a vastly underserved population access to a means to save or invest without first having to accumulate a minimum threshold deposit.

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Respectfully submitted,

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